



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2018-1081]**

**RIN 1625-AA00**

### **Safety Zone; Rocket Debris Control and Removal Operations, Atlantic Ocean, Cape Canaveral, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a 1000-yard temporary moving safety zone around the Falcon 9 rocket in the Atlantic Ocean, in the vicinity of Port Canaveral Harbor, Cape Canaveral, FL. This safety zone is necessary to protect personnel, vessels, and the public from potential hazards associated with the control and removal of the rocket and any debris from navigable waters of the Atlantic Ocean. All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Jacksonville or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 28, 2018. For purposes of enforcement, actual notice will be used from December 5, 2018 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket,

go to <http://www.regulations.gov>, type USCG-2018-1081 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Rory Boyle, Sector Jacksonville, Waterways Management Division, U.S. Coast Guard; telephone (904) 714-7661, email [Rory.C.Boyle@uscg.mil](mailto:Rory.C.Boyle@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

COTP	Captain of the Port
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. On December 5, 2018, the Coast Guard determined that immediate action was necessary to protect life and property from the hazards associated with control and removal of a Falcon 9 rocket and any associated debris located in the Atlantic Ocean. Due to the emergent nature and increased safety risks associated

with control and removal operations for the rocket, there is insufficient time to publish an NPRM and to receive public comments before the rulemaking is required. The regulation is necessary to provide for the safety of persons and vessels within a 1000-yard radius of the Falcon 9 rocket. For those reasons, it would be impracticable to publish an NPRM.

For the reasons discussed above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Jacksonville (COTP) has determined that potential hazards associated with control and removal operations for the Falcon 9 rocket will be a safety concern for persons and vessels within a 1000-yard radius of the rocket. The purpose of this rule is to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during control and removal operations associated with the Falcon 9 rocket.

### **IV. Discussion of the Rule**

This rule establishes a safety zone that will encompass all navigable waters of the Atlantic Ocean within a 1000-yard radius of a Falcon 9 rocket located at position 28°24.3N 080°30.8W, in the vicinity of Port Canaveral Harbor, Cape Canaveral, Florida. The safety zone will be enforced during control, movement, and removal operations associated with the Falcon 9 rocket from 7 p.m. on December 5, 2018 until 11:59 p.m. on December 28, 2018, unless sooner terminated by the COTP Jacksonville upon completion of the removal operations. The duration of the safety zone is intended to ensure the safety of persons, vessels, and the marine environment from potential hazards associated with rocket and debris movement control and

removal operations. These operations include the use of towing vessels, divers and support vessels. There will be occasions during the operations when there will be divers in the water and the waterway will be obstructed by the associated vessels and equipment. No vessel or person will be permitted to enter, transit through, anchor in, or remain within the safety zone unless authorized by the COTP Jacksonville or designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone granted by the COTP Jacksonville or a designated representative, all persons and vessels receiving such authorization must transit at a minimum safe speed and must comply with the orders of the COTP Jacksonville or designated representative. The Coast Guard will provide notice and status of the safety zone by Broadcast Notice to Mariners or on-scene designated representatives.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-

day. Although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the COTP Jacksonville or a designated representative, vessel traffic will be able to safely operate in the surrounding area during the enforcement. Additionally, any persons or vessels may request authorization to enter, transit through, anchor in, or remain within the safety zone from the COTP Jacksonville or a designated representative. Moreover, the Coast Guard will provide notice of the safety zone to the local maritime community by Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on “small entities” comprised of small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or

Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry within navigable waters outlined in the Discussion of the Rule above. This rule is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of the DHS Instruction Manual 023-01-001-01, Rev. 01.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

## **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### **PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07-1081 to read as follows:

#### **§ 165.T07-1081 Safety Zone; Rocket Debris Control and Removal Operations, Atlantic Ocean, Cape Canaveral, FL.**

(a) **Regulated area.** The following regulated area is a moving safety zone: All waters of the Atlantic Ocean within a 1,000-yard radius around the Falcon 9 rocket and associated debris. The safety zone will start east of Port Canaveral Harbor, Cape Canaveral, Florida, in approximate position 28°24.3N 080°30.8W and transit with the rocket in the vicinity of Port Canaveral Harbor, Cape Canaveral, FL.

(b) **Definition.** The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Jacksonville in the enforcement of the regulated area.

(c) **Regulations.** (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of



the Port Jacksonville or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Jacksonville by telephone at (904) 714-7557, or a designated representative via VHF-FM radio channel 16, to request authorization. If authorization is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative.

(3) The Coast Guard will issue notice of the safety zone to the local maritime community via Broadcast Notice to Mariners via VHF-FM marine channel 16 or by on-scene designated representatives.

(d) Enforcement. This section will be enforced from 7:00 p.m. on December 5, 2018 until 11:59 p.m. on December 28, 2018, unless sooner terminated by the Captain of the Port Jacksonville upon completion of rocket and debris control and removal operations.

Dated: December 6, 2018.

T. C. Wiemers,  
Captain, U.S. Coast Guard,  
Captain of the Port Jacksonville.

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